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 GOOGLE INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 3:10-cv-03561-WHA

**DECLARATION OF DANIEL PURCELL  
 IN SUPPORT OF ORACLE AMERICA,  
 INC.'S ADMINISTRATIVE MOTION TO  
 FILE UNDER SEAL EXHIBITS 1 AND 4  
 AND PORTIONS OF THE SECOND  
 DECLARATION OF FRED NORTON**

Judge: Hon. Donna M. Ryu

Date Comp. Filed: October 27, 2010

Trial Date: October 31, 2011

DECLARATION OF DANIEL PURCELL IN SUPPORT OF ORACLE AMERICA, INC.'S ADMINISTRATIVE  
 MOTION TO FILE UNDER SEAL EXHIBITS 1 AND 4 AND PORTIONS OF THE SECOND DECLARATION  
 OF FRED NORTON  
 CASE NO. 3:10-cv-03561-WHA

1 I, Daniel Purcell, declare as follows:

2 1. I am a partner in the law firm of Keker & Van Nest LLP, counsel to Google Inc.  
3 (“Google”) in the present case. I submit this declaration in support of Oracle America, Inc.’s  
4 (“Oracle”) Administrative Motion to File Under Seal Exhibits 1 and 4 and Portions of the  
5 Second Declaration of Fred Norton. [Dkt. No. 335]. I have knowledge of the facts set forth  
6 herein, and if called to testify as a witness thereto could do so competently under oath.

7 2. On August 25, 2011 this Court issued an Order granting in part and denying in  
8 part Oracle’s motion to seal Exhibits 1 and 4 and portions of the Second Norton Declaration.  
9 [Dkt. No. 356]. The Court denied Oracle’s motion to seal Exhibit 1 and the portions of the  
10 Second Norton Declaration. As explained below, Exhibit 1 and portions of the Second Norton  
11 Declaration contain Google’s confidential information. Under N.D. Cal. Local Civil Rule 79-  
12 5(d), Google has seven days from the date Oracle lodged Google’s confidential information to  
13 “file with the Court and serve a declaration establishing that the designated information is  
14 sealable.” Oracle lodged Google’s confidential information and filed its motion to seal on  
15 August 19, 2011. [Dkt. Nos. 335, 336]. Under Local Rule 79-5(d), Google’s deadline to submit  
16 declarations in support of Oracle’s motion is August 26, 2011.

17 3. Exhibit 1 to the Second Norton Declaration is an excerpt of Google’s privilege  
18 log for this case, which Google designated “HIGHLY CONFIDENTIAL – ATTORNEY’S  
19 EYES ONLY.” At the outset of this case, Oracle stipulated to a protective order, and the Court  
20 entered an Order Approving Stipulated Protective Order Subject to Stated Conditions [Dkt. No.  
21 68] that governs use in this case of documents designated “HIGHLY CONFIDENTIAL –  
22 ATTORNEY’S EYES ONLY” in this case. Under that order, Oracle was obligated to file  
23 Exhibit 1 under seal because Google’s privilege log contains confidential information regarding  
24 the date and general subject matter of privileged communications between Google and its  
25 counsel. Google considers the timing, frequency, and subject matter of its communications with  
26 its counsel to be highly confidential information. Under no circumstances does Google disclose  
27 any such information to the public during the normal course of business, or absent a direct court  
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1 order. Public disclosure of facts underlying Google's communications with its counsel would  
2 cause significant and undue harm to Google's business.

3 4. Portions of the Second Norton Declaration quote passages from the transcript of  
4 this Court's July 21, 2011 discovery hearing. For all the reasons stated in Google's motion to  
5 seal and redact those passages from the discovery-hearing transcript, [Dkt. No. 297], the  
6 corresponding portions of the Norton Declaration should be redacted and sealed until the  
7 privilege status of the Lindholm email is finally adjudicated. Google acknowledges that the  
8 Magistrate Judge has denied Google's motion to seal and redact the July 21, 2011 transcript, but  
9 Google retains the right to seek review of that ruling by Judge Alsup or the Federal Circuit.

10 I declare under penalty of perjury that the foregoing is true and correct and that this  
11 declaration was executed at San Francisco, California on August 26, 2011.

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13 By: /s/ Daniel Purcell  
14 DANIEL PURCELL  
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